

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

VERSUS TECHNOLOGY, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-1231 (SLR)
)	
RADIANCE, INC.,)	
)	
Defendant.)	

**VERSUS’S BRIEF IN OPPOSITION TO RADIANCE’S
MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM**

Plaintiff Versus Technology, Inc. (“Versus”) submits this brief in opposition to Defendant Radianse, Inc.’s (“Radianse”) Motion for Leave to File Supplemental Memorandum (D.I. 139). Simply put, Radianse should not be entitled to file a supplemental memorandum to its motions for summary judgment (D.I. 117) and dismissal (D.I. 78) more than two months after the completion of summary judgment briefing and a month after the summary judgment oral argument. To the extent the Court would like more reason to deny the requested leave, Versus will address the “grounds” asserted by Radianse to support its motion for leave.

Radianse asserts that the deposition of Walter Leipold “had been postponed at the request of plaintiff.” (D.I. 139, ¶ 1). This is untrue. Both parties agreed to take expert deposition in the early part of 2006 because the expert report schedule was extended – because a delay by Radianse in making its source code available to Mr. Leipold – leaving a relatively short window before claim construction and summary judgment briefing. While Versus does not agree that any part of Mr. Leipold’s deposition testimony supports

Radianse's motions (D.I. 78 & 117), Radianse assumed the risk that it could not use Mr. Leipold's testimony during the summary judgment phase by agreeing to schedule expert depositions after the summary judgment briefing.¹

Radianse asserts that Mr. Leipold's testimony "bears directly" on its motion because it "corroborates [its] factual statements." Mr. Leipold does not corroborate any fact in dispute. There are clearly undisputed irrelevant facts to which Mr. Leipold offered either no comment or no dispute. All of the alleged "facts" asserted in Radianse's summary judgment brief (D.I. 118) that were disputed in the declarations signed by Mr. Leipold and Mr. Tenarvitz in opposition to Radianse's motions continue to be disputed by Versus, Mr. Leipold and Mr. Tenarvitz. Radianse cannot identify any factual dispute raised by Versus in its opposition brief (D.I. 124) that was contradicted by Mr. Leipold's testimony.

A review of the transcript of Mr. Leipold's testimony in light of Radianse's pending motions has only served to waste attorney time and client money, and will only further serve to waste judicial time and resources. Nothing from the Leipold transcript contradicts the positions taken by Versus in opposition to Radianse's motions.

WHEREFORE, Plaintiff Versus respectfully requests this Court deny Radianse's motion for leave to file a supplemental memorandum in support of its pending motions.

¹ Ironically and outrageously, Radianse previously characterized the agreement to postpone expert depositions until early 2006 as a "fail[ure by Versus] to take the deposition of Dr. Sims during the time period scheduled by this Court for expert depositions." (D.I. 132, ¶¶ 3 and 4). Radianse fails to appreciate the effect its hypocrisy has on its credibility before the Court.

Respectfully submitted,

/s/ James M. Lennon

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Dated: March 1, 2006

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**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2006, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, and served copies of the same, on this date, on the following individuals in the manner indicated:

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